

83 - 1685

No.

Office - Supreme Court, U.S. FILED APR 12 1984 ALEXANDER L. STEVENS, CLERK
--

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1983

TIMOTHY CORBIN,

Appellant

v.

STATE OF ALASKA,

Appellee

ON APPEAL FROM THE COURT OF APPEALS
FOR THE STATE OF ALASKA

JURISDICTIONAL STATEMENT

RICHARD J. RAY

P.O. Box 961

Kodiak, Alaska 99615

(907) 486-6321

Counsel for Appellant

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	i
QUESTION PRESENTED	ii
OPINION BELOW	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS AND	
STATUTES INVOLVED.....	2
STATEMENT	3
THE QUESTION IS SUBSTANTIAL	4

TABLE OF AUTHORITIES

CASES:	<i>Page</i>
<i>McCarty v. McCarty</i> , 453 U.S. 210.....	2
<i>Reconstruction Finance Corporation v. Beaver County, PA,</i>	
328 U.S. 204	2
<i>Robinson v. Florida</i> , 378 U.S. 153	2
<i>Skiriotes v. Florida</i> , 313 U.S. 69	4

STATUTES:	<i>Page</i>
U.S. CONST art I, §8, cl. 10.....	2, 4
U.S. CONST art III, §2, cl. 1	2, 5
U.S. CONST art VI, cl. 2	3
16 U.S.C. §1801(a)(3)	5
18 U.S.C. §7(1)	3
18 U.S.C. §661	3, 4
28 U.S.C. §1257(2)	2

QUESTION PRESENTED

Can the State of Alaska constitutionally prosecute appellant for theft and, having obtained a conviction, punish appellant, the theft having occurred within the special maritime and territorial jurisdiction of the United States, when there exists a conflicting federal criminal theft statute prohibiting such conduct and prescribing punishment for such offense.

IN THE
Supreme Court Of The United States

OCTOBER TERM, 1983

TIMOTHY CORBIN,

Appellant

v.

STATE OF ALASKA,

Appellee

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Court of Appeals for the State of Alaska is reported in 672 P.2d 156, a copy of which is attached hereto as Appendix A. The order of the Supreme Court for the State of Alaska denying appellant's petition for hearing to review the decision of the appellate court is not reported. A copy of the order is attached hereto as Appendix B.

JURISDICTION

Appellant was prosecuted for theft in the Superior Court for the State of Alaska, Third Judicial District at Kodiak. His conviction there was affirmed by the Court of Appeals for the State of Alaska in an opinion issued November 25, 1983. On January 20, 1984, the Supreme Court for the State of Alaska entered an order denying appellant's petition for hearing seeking review of the decision of the Court of Appeals. At a sentencing hearing in Superior Court on February 29, 1984, a copy of the Notice of Appeal to the Supreme Court of the United States was filed in open court. Notice of Appeal to the Supreme Court of the United States was filed with the Court of Appeals and the Supreme Court for the State of Alaska on February 27, 1984. The jurisdiction to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustained the jurisdiction on direct appeal in this case: *McCarty v. McCarty*, 453 U.S. 210; *Robinson v. Florida*, 378 U.S. 153; *Reconstruction Finance Corporation v. Beaver County, PA*, 328 U.S. 204.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following constitutional provisions are involved in this appeal. "The Congress shall have power [t]o define and punish . . . felonies committed on the high seas." U.S. CONST. art. I, §8, cl. 10. "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction." U.S. CONST. art. III, §2, cl. 1. "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall

be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

Sections (7)1 and 661 of Title 18, United States Code, are set forth in Appendix C attached hereto.

STATEMENT

Appellant, Timothy Corbin, served as master of the fishing vessel Ocean Bounty during the Kodiak area king crab season in the fall of 1981. The State of Alaska alleged that, in the course of that employment, he caused the theft of fishing gear, namely crab pots, belonging to Richard Powell. The grand jury returned an indictment and the state prosecuted Corbin for theft in the second degree, a class C felony. At trial the parties stipulated that the theft occurred in waters of the Gulf of Alaska southwest of Kodiak Island, no less than sixteen miles from the nearest point of land. During the proceedings, appellant's counsel moved, on more than one occasion, to dismiss the prosecution, the grounds for the motion being either federal criminal jurisdiction on the high seas was exclusive or that federal law pre-empted the state's theft prosecution. The motions were denied and a jury convicted Corbin.

Conviction of a class C felony under Alaskan law subjects an individual to a maximum term of five years imprisonment, a fine of up to \$50,000.00, and restitution under specified circumstances. Appellant was sentenced to two years imprisonment with twenty-one months suspended and as a condition of probation ordered to refrain from commercial fishing for one year. These portions of appellant's sentence, together with a future determination by the court of a fine and/or restitution, were stayed pending the outcome of appeals pursuant to Alaskan law. Appellant was released under general conditions of probation.

Corbin perfected his appeal as of right to the Court of Appeals for the State of Alaska. He sought to reverse the trial court's ruling on the motions to dismiss arguing, as the court acknowledged in its opinion, that federal criminal jurisdiction

on the high seas was exclusive or that the federal criminal theft statute, Title 18, United States Code, Section 661, pre-empted state prosecution for the theft under the circumstances. The appellate court affirmed the conviction in an opinion issued November 25, 1983.

Appellant pursued discretionary review of the affirmance in a petition for hearing to the Supreme Court for the State of Alaska, advancing the same arguments as before. Review was denied by order of the court, January 20, 1984.

THE QUESTION IS SUBSTANTIAL

The issue involved in this appeal is similar to that raised in *Skiriotes v. Florida*, 313 U.S. 69, which recognized the legitimacy of state action to enforce its criminal laws extra-territorially on navigable waters, provided that state law did not conflict with acts of Congress. While no conflict existed in *Skiriotes*, the instant case squarely presents that issue.

Appellant's position is that Alaska's theft statute, when coupled with the punishment resulting from a conviction thereof, is wholly repugnant to and therefore demonstrably in conflict with federal constitutional provisions and certain statutory law promulgated pursuant to constitutional mandate.

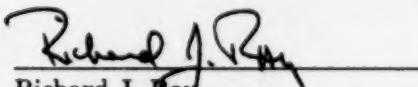
The constitution confers on Congress the power "[t]o define and punish . . . felonies committed on the high seas." U.S. CONST. art. I, §8, cl. 10. Congress has accordingly enacted a comprehensive criminal code, including a theft statute, Title 18, United States Code, Section 661, for application within the special maritime and territorial jurisdiction of the United States. As part and parcel of Section 661, punishment for conviction of the offense is prescribed. Violation of the statute subjects a defendant to a prison term not exceeding five years, a fine not exceeding \$5,000.00, or both. Under Alaska's theft statute, appellant and those individuals similarly situated face maximum punishment of imprisonment up to five years, a fine up to \$50,000.00, and the potential for being ordered to make restitution in an indeterminate amount. In the specific case

of appellant, he has in addition been ordered to refrain from commercial fishing for a period of one year.

Alaska's prosecution and punishment of appellant for theft also undermines the federal constitutional grant of admiralty jurisdiction to the courts of the United States, United States Constitution, Article III, §2, clause 1. This provision was intended to provide for uniformity in the law respecting admiralty and maritime matters. The prosecution pursued by appellee in the instant case erodes the desired uniformity of operation of federal criminal law on the high seas.

Appellant, like commercial fishermen nationwide, is involved in an industry recognized by Congress as important to the national interest. The Fishing Conservation and Management Act, Title 16, United States Code, Section 1801(a)(3) expresses the congressional recognition that "[c]ommercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation." Appellant was subjected to state prosecution arising from his activity within the fishing industry. It is of the utmost importance to appellant and other commercial fishermen whether such action is a legitimate exercise of state authority.

Respectfully submitted,



Richard J. Ray
Counsel for Appellant
P.O. Box 961
Kodiak, Alaska 99615

APPENDICES

APPENDIX A

NOTICE: This opinion is subject to formal correction before publication in the *Pacific Reporter*. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

TIMOTHY CORBIN,)
)
Appellant,)
)
v.)
)
STATE OF ALASKA,) File No. 7010
)
Appellee.) OPINION
) [No. 310 — November 25, 1983]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kodiak, Roy H. Madsen, Judge.

Appearances: George F. Vogt, Kodiak, for Appellant. W. H. Hawley, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

COATS, Judge.

The state charged Timothy Corbin with theft in the second

degree, a class C felony. AS 11.46.100; AS 11.46.130(a)(1).¹ The indictment charged that Corbin stole crab pots valued at over \$500 which belonged to Richard Powell, owner of the F/V Icelander. A jury convicted Corbin of this offense. Judge Roy Madsen sentenced Corbin to two years' imprisonment with twenty-one months suspended and placed him on probation until July 6, 1984. As conditions of probation, Judge Madsen ordered Corbin to refrain from commercial fishing for one year and to make restitution.

The state and Corbin stipulated that "the area wherein the alleged criminal offense occurred was in the Pacific Ocean located no less than sixteen miles from the nearest point of land." Corbin argued in the trial court and now argues on appeal that the state does not have jurisdiction to prosecute him for a theft offense which took place outside the three-mile limit. Judge Roy Madsen denied Corbin's motion to dismiss for lack of jurisdiction. We affirm.

Corbin does not contest the fact that state statutes which establish the state's jurisdiction for criminal offenses authorize a prosecution for an offense committed outside the three-mile

¹AS 11.46.100 reads as follows:

Theft defined: A person commits theft if

(1) with the intent to deprive another of property or to appropriate property of another through himself or a third person, he obtains the property of another.

AS 11.46.130 reads as follows:

Theft in the second degree. (a) A person commits a crime of theft in the second degree if he commits theft as defined in §100 of this chapter and if (1) the value of the property or services is \$500 or over, but less than \$25,000.

limit.² Rather, Corbin argues that the federal government has exclusive jurisdiction in criminal matters outside the three-mile limit and also that a federal criminal theft statute shows an intent to pre-empt any state regulation of criminal conduct.³

In *State v. Bundrant*, 546 P.2d 530, 537-38 (Alaska 1976), *appeal dismissed sub nom. Uri v. Alaska*, 429 U.S. 806, 50 L.Ed.2d 66 (1976), the court discussed the constitutional doctrines of federal exclusivity and federal pre-emption. The court stated that under the doctrine of federal exclusivity:

[C]ertain provisions of the federal constitution which delegate powers to the central government implicitly restrict the police powers of the states and thereby carve out areas which can be regulated, if at all, only by the federal government. The concept is one of exclusive federal domains.

²AS 44.03.010 reads as follows:

Offshore waters and lands. The jurisdiction of the state extends to waters offshore from the coast of the state as follows:

(1) The marginal sea to its outermost limits as those limits are from time to time defined or recognized by the United States of America by international treaty or otherwise.

(2) *The high seas to the extent that jurisdiction is claimed by the United States of America*, or to the extent recognized by the usages and customs of customs of international law or by agreement to which the United States of America or the state is a party.

(3) Submerged lands including the subsurface of submerged lands lying under the waters mentioned in this section.

³18 U.S.C.A. §661 (West, 1976) reads in part as follows:

Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a value exceeding \$100, or is taken from the person, of another, by a fine of .^{ot} more than \$5,000, or imprisonment for not more than 5 years, or both . . .

The doctrine of federal pre-emption also deals with the allocation of state and federal responsibilities, but it speaks to those situations where there is recognized concurrent state and federal authority. It holds that when Congress has exercised its regulatory authority over a particular subject in manner to indicate an intention to deal fully and exclusively therewith, all state regulation in the particular field must yield. The basic premise is the supremacy of federal law.

In *Bundrant* the court concluded that the state could regulate the crabbing industry and had jurisdiction over offenses involving the violation of crab fishing regulations which occurred outside the three-mile limit. *Id.* at 552-54. The court specifically rejected the argument that the state had no jurisdiction to prosecute these offenses because of the doctrines of federal exclusivity and federal pre-emption. *Id.* at 544. These holdings of *Bundrant* were reaffirmed in *F/V American Eagle v. State*, 620 P.2d 657, 561-62 (Alaska 1980), *Appeal dismissed*, 454 U.S. 1130, 71 L.Ed.2d 284 (1982). We believe that *Bundrant* essentially disposes of Corbin's claim.

We recognize, of course, that Corbin's case involves extending the Bundrant holding to a general criminal statute which was not passed specifically to regulate the crabbing industry. However, we conclude that the enforcement of this theft statute was so closely tied to the regulation of the crabbing industry that state jurisdiction in this case is justified. The instant case does not require us to define with precision to what extent the state can enforce its general criminal statutes beyond state territorial waters. However, as a general principle, we find the reasoning of *People v. Corsino*, 397 N.Y.S.2d 342 (N.Y. Crim. Ct. 1977) to be persuasive. In that case, the defendant committed an assault in an airplane which landed at Kennedy airport in New York City. The defendant argued that the state of New York did not have jurisdiction to try him for the assault because he did not commit the offense in New York State or in the air space over New York. The court held that New York had jurisdiction. The court reasoned that:

Though none of this alleged conduct occurred in New

York State, the conduct has a particular effect in the state. The complainant was entering the state through an air terminal situated therein. Misdemeanor assaults that occur on planes enroute to New York could have a materially harmful impact upon the welfare of New York's community. The threat of physical harm to visitors and to residents of the state who use the airports as a means of ingress to the state would have a far-reaching effect on the use of airports situated in New York. *Though the federal government has jurisdiction over crimes committed on interstate and international flights, this jurisdiction is not regularly exercised in cases like the present one.* The practical effect of failing to exercise New York's power over crimes having a particular effect on the jurisdiction would be to open the way to uncontested and dangerous conduct in the air routes to this state.⁴

Id. at 344.

In *F/V American Eagle* the court clearly reaffirmed the importance to the state of regulating the crab fishing industry outside the territorial waters of the state. In reaffirming *Bundrant*, the court stated:

In *Bundrant* we upheld the state's exercise of regulatory jurisdiction over crab fisheries beyond the three-mile limit against arguments based on federal exclusivity, preemption, and other doctrines. This power to regulate beyond the territorial boundary, where the crab spend much of their life cycle, was shown in that case to be clearly necessary if the economically and ecologically important migratory crab population within the state's territorial boundary is to be perpetuated.

F/V American Eagle, 620 P.2d at 662-63.

The theft of crab pots appears to be closely related to the regulation of the crab fishing industry. Furthermore, as in Corsino, it appears that the federal government is not exercis-

⁴The supreme court found similar reasoning persuasive in *Bundrant*, 546 P.2d at 555-56.

ing its jurisdiction to prosecute thefts such as the one in the instant case. First, state authorities, through their regulation of the crab fishing industry, are probably in the best position to enforce criminal statutes which have an impact on the crab fishery. We assume it is quite possible that if the state could not prosecute these offenses, they would not be prosecuted. As in *Corsino*, the state's interest in prosecution is clear. There is no evidence of any conflict with federal policy.⁵ We con-

⁵In *F/V American Eagle*, 620 P.2d at 662 n.10, the court noted that the passage of the Fishery Conservation and Management Act of 1976, 16 U.S.C. §1801-82 (1974), could present a problem of federal pre-emption. The court stated that:

To the extent that there may be a conflict between state fisheries regulations and federal regulations promulgated under the Act, Alaska's authority to regulate fisheries under *Bundrant* has been superseded. See 16 U.S.C.A. §1856 (West, 1979 Supp.) (delineating federal and state jurisdiction in this area).

However, since the events of *American Eagle* arose prior to March 1, 1977, the effective date of the Act, the court relied upon *Bundrant* to decide that Alaska had jurisdiction to regulate crab fishing beyond its traditional three-mile limit.

The Act, in relevant part, provides:

No state may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such state.

16 U.S.C.A. §1856(a) (West, 1983 Supp.).

Corbin and the state have stipulated that Corbin is an Alaskan resident and his vessel is registered in Alaska.

Corbin has not argued that the federal government has in any way pre-empted state regulation of the crab fishing industry by passing the Fishery Conservation and Management Act. Rather, he argues that the fact that there is a general federal criminal statute which applies to thefts establishes pre-emption. We have rejected that contention by holding that there is no conflict between allowing both federal and state concurrent jurisdiction over theft of crab pots outside Alaskan territorial waters.

The Fishery Conservation and Management Act on its face does not appear to require federal pre-emption since it specifically allows the state to regulate vessels "registered under the laws of such state." Corbin has not argued that federal regulations pre-empt state regulation of the crab fishing industry. Nor has he argued that because the state can only regulate vessels registered under the laws of the state, realistic regulation of the crab fishing industry is no longer feasible or possible. See *Bundrant*, 546 P.2d at 554-55. We do not express any opinion on these issues.

clude that the state has jurisdiction to prosecute Corbin for theft.

The conviction is AFFIRMED.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF ALASKA

TIMOTHY CORBIN,)
)
Petitioner,)
)
v.)
)
STATE OF ALASKA,) Supreme Court No. S-209
) ORDER
)
Respondent.)
_____)

Court of Appeals No. 7010
Superior Court No. 3KO 81-901 Cr.

Before: Burke, Chief Justice, Rabinowitz, Matthews and
Moore, Justices. [Compton, Justice, not participating]

On consideration of the petition for hearing filed December
9, 1983 and the response to the petition filed January 6, 1984,

IT IS ORDERED:

The petition for hearing is denied.

Entered by direction of the court at Anchorage, Alaska on
January 20, 1984.

CLERK OF THE SUPREME COURT

ROBERT D. BACON

APPENDIX C

18 U.S.C. § 7(1). Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

18 U.S.C. § 661. Within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a value exceeding \$100, or is taken from the person of another, by a fine of not more than \$5,000, or imprisonment for not more than five years, or both; in all other cases, by a fine of not more than \$1,000 or by imprisonment not more than one year, or both.

If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which is shown thereby, or the sum which might be recovered in the absence thereof, shall be the value of the property stolen.